

Message Text

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51

ACTION L-02

INFO OCT-01 ARA-06 ISO-00 USIE-00 CPR-01 JUSE-00 CU-02

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FM AMEMBASSY QUITO

TO SECSTATE WASHDC PRIORITY 3638

C O N F I D E N T I A L QUITO 8429

E.O. 11652: GDS

TAGS: EC AMGT

SUBJECT: CLAIMS RESULTING FROM CLOSING OF QUITO BINATIONAL CENTER

DEPT PASS USIA

USIS FOR HIDALGO

REF: STATE 261625

1. SUMMARY: EMBASSY UNCERTAIN WHAT ASSETS REMAIN BNC BUT BELIEVES THERE ARE NONE. WE CONSIDER WE HAVE MORAL RESPONSIBILITY TO SOME BNC DIRECTORS SHOULD CLAIMS AGAINST THEM PROSPER. WE DO NOT THINK USG SHOULD WAIVE DIPLOMATIC IMMUNITY AND THAT THIS ACT WILL NOT CAUSE SUBSTANTIAL DAMAGE TO USG-GOE RELATIONS. END SUMMARY.

2. BEFORE ADDRESSING SPECIFIC QUESTIONS SET FORTH IN REFTEL, WE OFFER THE FOLLOWING COMMENTS ON CERTAIN SPECIFIC POINTS AS LISTED REFTEL:

A. PARA. 2 OF REFTEL: PAO BELL WAS NOT A MEMBER OF THE BNC BOARD IN ACCORDANCE WITH BOARD STATUTES, BUT HE ATTENDED, INVITED BY BOARD, EX OFFICIO. HE HAD NO VOTE NOR DID HIS PRESENCE HELP CONSTITUTE A QUORUM.

B. PARA 4 OF REFTEL: ON ITEM B, WE DO NOT KNOW WHETHER FALCONI HAS BEEN PAID (SEE BELOW).

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C. PARA. 5 OF REFTTEL: WE DO NOT BELIEVE THAT IT IS NECESSARY FOR THE USG TO ATTEMPT A DIRECT SETTLEMENT WITH THE CLAIMANTS. WE TEND TO AGREE THAT ANY SUCH ATTEMPT WOULD PUT USG IN POSITION OF SEEMING TO HAVE ASSUMED LEGAL RESPONSIBILITY FOR SUCH A SETTLEMENT.

3. WITH RESPECT TO KEY POINTS RAISED IN PARA 6 REFTTEL:

A. WE DO NOT KNOW WHAT ASSETS THE BNC NOW HAS BECAUSE BELL WAS ADVISED BY HIDALGO NOT COMMUNICATE DIRECTLY WITH FALCONI BUT ONLY THROUGH BUSTAMANTE. FALCONI HAS UNTIL NOW REFUSED TO GIVE A COPY OF THE LIQUIDATOR'S REPORT TO ANYONE BUT A USG OFFICIAL, AND FOR US TO ACCEPT THE PAPERS WOULD SUGGEST A LEGAL RELATIONSHIP TO THE BNC. WE HAVE AGAIN ASKED BUSTAMANTE TO TRY TO OBTAIN A COPY FROM FALCONI. WE UNDERSTAND INFORMALLY THAT NO ASSETS REMAIN. IF THEY DO REMAIN, THEY ARE IN THE HANDS OF THE LIQUIDATOR.

B. ALTHOUGH THERE IS NO EVIDENCE IN THE BOARD MINUTES THAT FALCONI WAS INSTRUCTED BY THE BOARD TO ENTER INTO THE MENTIONED THREE-YEAR CONTRACT, OTHER CORRESPONDENCE (BELL LETTER TO DILLON, SEPT. 13, 1973) INDICATES THAT FALCONI CERTAINLY UNDERSTOOD THAT HE HAD SUCH AUTHORIZATION. ADDITIONALLY, THERE IS NO DIRECT EVIDENCE THAT THE BOARD EVER RATIFIED THE AGREEMENT ALTHOUGH MINUTES OF OCT. 2, 1973 BOARD MEETING REVEAL THAT A COMMITTEE HAD BEEN NAMED TO NEGOTIATE A COLLECTIVE CONTRACT AND REFORM THE BNC STATUTES AS CALLED FOR IN THE SEPTEMBER 11 LABOR AGREEMENT.

C. WE BELIEVE THAT THE USG HAS RESPONSIBILITY IN A MORAL SENSE FOR THOSE BOARD MEMBERS WHO, ACTING IN GOOD FAITH, MAY FIND THEMSELVES FACING FURTHER LEGAL CLAIMS. NEVERTHELESS, ONLY FALCONI AS A BOARD MEMBER APPEARS TO HAVE ACTED WITH MANAGERIAL RESPONSIBILITY UNDER ARTICLE 35 OF THE LABOR CODE AND THEN PRIMARILY IN THE ACT OF SIGNING THE AGREEMENT OF SEPTEMBER 11, 1973 WITH THE BNC EMPLOYEES.

D. WE DO NOT AT THE MOMENT FORESEE SUBSTANTIAL DAMAGE TO US-GOE RELATIONS IN THE EVENT THE USG CLAIMS DIPLOMATIC IMMUNITY.

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4. AS A RESULT OF A CAREFUL REVIEW OF THE FILES ON THIS CASE, WE BELIEVE THAT THERE WAS SUFFICIENT AMBIGUITY IN THE CIRCUMSTANCES SURROUNDING THE CLOSING OF THE CENTER THAT THE CLAIMANTS' PETITIONS MIGHT WELL PROSPER AGAINST THOSE BOARD MEMBERS WHO CAN BE BROUGHT BEFORE AN ECUADOREAN LABOR COURT AND SHOWN TO HAVE HAD MANAGERIAL RESPONSIBILITY UNDER ARTICLE 35 OF THE LABOR CODE. PROBABLY THIS MEANS ONLY

FALCONI. USG RESPONSIBILITY, MORAL OR OTHERWISE, TO HIM, CAN PROBABLY ONLY BE MEASURED AFTER A REVIEW OF THE LIQUIDATION PAPERS IF AND WHEN THOSE BECOME AVAILABLE AND AT THE TIME JUDGMENT IS MADE.

5. FOR THESE REASONS THE EMBASSY BELIVES THAT THE USG SHOULD RESPOND TO THE FOREIGN MINISTRY BY NOTE STATING SIMPLY THAT THE USG DOES NOT WAIVE DIPLOMATIC IMMUNITY IN THIS CASE. IF ADDITIONAL EXPLANATION ALONG THE LINES OF PARA 2 REFTEL IS DEEMED APPROPRIATE, IT SHOULD BE GIVEN ORALLY.

6. PLEASE ADVISE.
BREWSTER

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NNN

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